

CHAPTER NO. 148

HOUSE BILL NO. 3256

By Representative Shepard

Substituted for: Senate Bill No. 3230

By Senator Jackson

AN ACT to amend Chapter 50 of the Private Acts of 1989; and any other acts amendatory thereto, which established the Greater Dickson Gas Authority.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Section 1 of Chapter 50 of the Private Acts of 1989 (the "Act") is hereby amended by deleting said section in its entirety and by substituting instead the following:

Section 1. Purpose and Creation of Authority. A governmental authority, to be known as the "Greater Dickson Gas Authority," is hereby created and constituted. The Authority shall be a public corporation in perpetuity under the corporate name of the Greater Dickson Gas Authority, and shall under that name be a political subdivision of the State and a body politic and corporate. The Authority is created for the purpose of planning, acquiring, constructing, improving, furnishing, equipping, financing, owning, operating, and maintaining gas systems for various types of gas, within or outside the Region and such other utility systems as any gas utility is authorized by the general laws of the State of Tennessee to own or operate.

SECTION 2. Section 2 of Chapter 50 of the Act is hereby amended by deleting the definitions of "Bonds", "Municipality", "Project", "Region" and "Revenues" and by substituting and adding the following to said section:

(a) "Board" means the Board of Directors of the Authority.

(b) "Bonds" means bonds, interim certificates, notes, debentures, lease-purchase agreements, loan agreements and all other evidences of indebtedness either issued by or the payment of which has been assumed by the Authority.

(c) "Municipality" means any county, incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or subdivision within or without this state, and any agency, authority, branch, bureau, commission, corporation, department or instrumentality of the foregoing now or hereafter authorized by law to be created.

(d) "Project" means all systems owned and/or operated by the Authority for the provision of any type of gas and related energy for heating, processing, lighting and any other purpose for which gas and its related projects can be used.

(e) "Region" means (1) the area within the corporate limits of the City of Dickson, Tennessee, as such boundaries now or hereafter exist; (2) the geographic boundaries of the Sam Houston Utility District of Houston, Stewart and Dickson Counties, Tennessee as set out in Chapter 50 of the Private Acts of 1989; (3) all areas of Dickson, Stewart and Houston Counties and any additional county contiguous to said counties not presently served by any other holder of a

franchise as of the effective date of Chapter 50 of the Private Acts of 1989, upon consent by resolution of the governing body of said county; and (4) any other area outside of areas designated in (1), (2), and (3) within or without the state upon consent of the applicable governing body; provided, the Authority shall not exercise any of the powers granted in this Act wholly or partly within the legal boundaries of an incorporated city or town or a utility district incorporated pursuant to the Utility District Act of 1937, as amended, or any other municipality, except as allowed by law, without the consent of the governing body of such city, town, utility district, or other municipality.

(f) "Revenues" means all monies received by the Authority derived from the Project.

(g) "System" means any plant, works, system, facility, property, or parts thereof, together with all appurtenances thereto, used or useful in connection with the furnishing of any of the services, personal property and commodities authorized to be provided herein, including generation or production facilities, transmission facilities, storage facilities, distribution and collection facilities, and all real and personal property of every nature comprising part of or used or useful in connection with the foregoing, and all appurtenances, contracts, leases, franchises and other intangibles relating to the foregoing.

SECTION 3. Section 3 of the Act is hereby amended by adding the following new subsections:

(g) Any director may be removed from office for cause upon a vote of three (3) members of the Board.

(h) The Board shall appoint a chief executive officer of the Authority and who shall be qualified by training and experience for the general management of and operation of the business and affairs of the Authority. The salary and title of the chief executive officer shall be fixed by the Board. The chief executive officer shall serve at the pleasure of the Board and shall have such authority, duties and responsibilities, as the Board of Directors shall deem necessary for the business of the Authority.

SECTION 4. Section 4(3) of the Act is hereby amended by deleting the phrase "which project shall be situated within the boundaries of the region,".

SECTION 5. Section 4(6) of the Act is hereby amended by deleting it in its entirety and by substituting instead the following:

(6) To make and enter into all contracts, trust instruments, agreements, and other instruments with any municipality, the State of Tennessee, the United States government or any agency thereof, the Tennessee Valley Authority, or any person, including, without limitation, bonds and other forms of indebtedness and contracts for the management and operation of any project, any facility or any system and the services provided in connection therewith;

SECTION 6. Section 4(14) of the Act is hereby amended by deleting the phrase "including a general manager,".

SECTION 7. Section 4 of the Act is hereby amended by adding the following new subsections:

(17) To plan, acquire, construct, improve, and operate one or more systems as part of its project and to enter into an agreement with any municipality or person to operate any system owned by such municipality or person upon such terms and conditions as shall be agreed upon by the Board;

(18) To make and execute any and all contracts and instruments necessary or convenient for the full exercise of the powers herein granted, and in connection therewith to stipulate and agree to such covenants, terms and conditions and such term or duration as shall be appropriate, including, but without limitation, contracts for the purchase or sale of any of the commodities, personal property or services authorized herein to be provided by the Authority, and carry out and perform the covenants, terms and conditions of all such contracts and instruments. In connection with any contract to acquire or sell any of the commodities or services authorized herein, the Authority may enter into commodity price exchange or swap agreements, agreements establishing price floors or ceilings, or both, or other price hedging contracts with any person or entity under such terms and conditions as the Authority may determine, including, without limitation, provisions permitting the Authority to indemnify or otherwise pay any person or entity for any loss of benefits under such agreement upon early termination thereof or default thereunder. When entering into any such contract or arrangement or any such swap, exchange or hedging agreement evidencing a transaction bearing a reasonable relationship to this State and also to another state or nation, the Authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this State or the laws of such other state or nation; provided, that jurisdiction over the Authority shall lie solely in the courts of Dickson County, Tennessee;

(19) To sell, exchange or interchange any of the commodities or services authorized to be provided herein either within or outside the State and to establish prices to be paid for such commodities or services and establish pricing structures with respect thereto, including provision for price rebates, discounts, and dividends; and, in connection with any such sales, exchanges or interchanges, to act as agent for such consumers, to secure contracts and arrangements with other entities or persons, to make contracts for the sale, exchange, interchange, pooling, transmission, distribution, or storage of any of the commodities or services authorized to be provided herein, inside or outside this State, and to transmit, transport and distribute any such commodities or services both for itself and on behalf of others;

(20) To enter into joint ventures and cooperative arrangements with one or more persons, including the formation of a partnership, limited liability company or not-for-profit corporation to accomplish any of the purposes set forth herein or to exercise any of the powers set forth herein;

(21) To contribute its funds for the financial aid of any nonprofit charitable organization or nonprofit civic organization, as such terms are defined in Section 6-54-111;

SECTION 8. Section 7(a) of the Act is hereby amended by deleting the phrase "at such rate or rates", in the third sentence and by substituting in its place the phrase "at a zero (0) rate or at such rate or rates which may vary from time to time".

SECTION 9. Section 7 of the Act is hereby amended by adding the following new subsection:

(f) The Authority shall have the power and is hereby authorized to issue notes in anticipation of the collection of revenues from all or any portion of the project for whose benefit the financing is undertaken for the purpose of financing gas purchases, including storage costs and pipeline capacity costs. Any such notes shall be secured solely by a pledge of and lien on the revenues of the system constituting the portion of the project for whose benefit the financing is undertaken. The principal amount of notes which may be issued during any twelve-month period shall not exceed sixty percent (60%) of total gas purchases for the same period, and all notes issued during such period shall be retired and paid in full on or before the end of such period. The notes shall be sold in such manner, at such price and upon such terms and conditions as may be determined by the Board. No notes shall be issued under this subsection unless the system, constituting the portion of the project as applicable, has positive retained earnings as shown in the most recent audited financial statements of such system, and such system has produced positive net income in at least one (1) fiscal year out of the three (3) fiscal years next preceding the issuance of the notes as shown on the audited financial statements of such system. No notes issued under this subsection shall be issued without first being approved by the state director of local finance. If revenues of such system are insufficient to pay all such notes at maturity, any unpaid notes may be renewed one (1) time for a period not to exceed one (1) year or otherwise liquidated as approved by the comptroller of the treasury or the director of the division of local finance.

(g) Bonds issued hereunder as a part of an issue the last maturity of which is not later than five (5) years following the date of issuance of said Bonds shall be issued as and shall be referred to as notes.

(h)

(1) The Authority, by resolution of the Board, may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and conditions as the Board may determine, including, without limitation, provisions permitting the Authority to pay to or receive from any person or entity any loss of benefits under such agreement upon early termination thereof or default under such agreement with respect to all or any portion of any issue of bonds and refunding bonds issued pursuant to this Act, at any time during the term of the bonds or refunding bonds, and upon receipt of a report of the comptroller of the treasury or the comptroller's designee finding that the contracts and agreements authorized in this subsection are in compliance with the guidelines, rules or regulations adopted or promulgated by the state funding board, as set forth in Section 7-34-109(h).

(2) The Authority may enter into an agreement to sell bonds (other than its refunding bonds) under this chapter providing for delivery of its bonds on a date greater than ninety (90) days and not greater than five (5) years (or such greater period of time if approved by the comptroller of the treasury or the comptroller's designee), from the date of execution of such agreement or to sell its refunding bonds providing for delivery thereof on a date greater than ninety (90) days from the date of execution of the agreement and not greater than the first optional redemption date on which the bonds being refunded can be optionally redeemed resulting in cost savings or at par, whichever is earlier, only upon receipt of a report of the comptroller of the treasury or the

comptroller's designee finding that the agreement or contract of the Authority to sell its bonds as authorized in this subsection is in compliance with the guidelines, rules or regulations adopted or promulgated by the state funding board in accordance with the provisions of Section 7-34-109(h). Agreements to sell bonds and refunding bonds for delivery ninety (90) days or less from the date of execution of the agreement do not require a report of the comptroller of the treasury or the comptroller's designee.

(3) Prior to the adoption by the Board of a resolution authorizing a contract or agreement described in subsection (h) (1) or (2), a request shall be submitted to the comptroller of the treasury or the comptroller's designee for a report finding that such contract or agreement is in compliance with the guidelines, rules or regulations of the state funding board. In accordance with such guidelines, rules or regulations of the state funding board, within fifteen (15) days of receipt of the request, the comptroller of the treasury or the comptroller's designee shall determine whether the contract or agreement substantially complies with the guidelines, rules or regulations and shall report thereon to the Authority. If the report of the comptroller of the treasury or the comptroller's designee finds that the contract or agreement complies with the guidelines, rules or regulations of the state funding board or if the comptroller of the treasury shall fail to report within the fifteen-day period, then the Authority may take such action with respect to the proposed contract or agreement as it deems advisable in accordance with the provisions of this subsection and the guidelines, rules or regulations of the state funding board. If the report of the comptroller of the treasury or the comptroller's designee, if issued within fifteen (15) days of receipt of the request, finds that such contract or agreement is not in compliance with the guidelines, rules or regulations, then the Authority is not authorized to enter into such contract or agreement. The guidelines, rules or regulations shall provide for an appeal process to a determination of noncompliance.

(4) When entering into any contracts or agreements facilitating the issuance and sale of bonds or refunding bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, and agreements with the purchaser of the bonds evidencing a transaction bearing a reasonable relationship to this State and also to another state or nation, the Authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this State or the laws of such other state or nation; provided, that jurisdiction over the Authority shall lie solely in the courts of Dickson County, Tennessee.

(i) Prior to the adoption or promulgation by the state funding board of guidelines, rules or regulations with respect to the contracts and agreements authorized in subsections (h) (1) and (2), the Authority may enter into such contracts or agreements to the extent otherwise authorized by the general laws of the State.

SECTION 10. Section 8 of the Act is hereby amended by deleting all words and punctuation appearing after the phrase "having general circulation in the geographic area of the region" in the third paragraph of Section 8.

SECTION 11. Section 9 of the Act is hereby amended by deleting subsections (b) and (c) and by adding the following new subsections (b) and (c):

(b) In addition to all other rights and all other remedies, any holders of bonds of the Authority, including a trustee for bondholders, shall have the right:

(1) By mandamus or other suit, action or proceeding at law or in equity, to enforce his rights against the Authority and the Board of the Authority, including the right to require the Authority and such board to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, the revenues produced by such rates or charges, and to require the Authority and such Board to carry out any other covenants and agreements with such bondholders and to perform its and their duties under this Act.

(2) By action or suit in equity to enjoin any acts or things which may be unlawful or a violation of the rights of such holder or holders of bonds.

(3) By suit, action or proceeding in the Chancery Court of Dickson County to obtain an appointment of a receiver of any system or systems of the Authority or any part or parts thereof. If such receiver be appointed, such receiver may enter and take possession of such system or systems or part or parts thereof and operate and maintain same, and collect and receive all fees, rents, tolls or other charges thereafter arising therefrom in the same manner as the Authority itself might do and shall dispose of such money in a separate account or accounts and apply the same in accordance with the obligations of the Authority as the court shall direct.

(4) By suit, action or proceeding in the Chancery Court of Dickson County to require the Board of the Authority to account as if it were the trustee of an express trust.

(c) Any pledge of, or lien on, revenues, fees, rents, tolls or other charges received or receivable by the Authority to secure the payment of any bonds of the Authority, and the interest thereon, shall be valid and binding from the time that the pledge or lien is created or granted and shall inure to the benefit of the owner or owners of any such bonds until the payment in full of the principal thereof and premium and interest thereon. The priority of any pledge or lien with respect to competing pledges or liens shall be determined by the date such pledge or lien is created or granted. Neither the resolution nor any other instrument granting, creating, or giving notice of the pledge or lien need be filed or recorded to preserve or protect the validity or priority of such pledge or lien.

SECTION 12. Section 9(a) of the Act is hereby amended by deleting the phrase "the project" each place it appears and by substituting instead the phrase "all or portion of the project".

SECTION 13. Section 10(a) of the Act is hereby amended by deleting the first sentence and the first word of the second sentence and by beginning the second sentence with the phrase "The Authority".

SECTION 14. Section 10(a) of the Act is further amended by deleting the reference "Title 42" in the last sentence and by substituting instead the phrase "Title 48".

SECTION 15. Section 11 of the Act is hereby amended by deleting the phrase "except as may otherwise be authorized by the governing body of the City of Dickson," each place it appears.

SECTION 16. The following new sections shall be added to the Act:

Section 22. Open Meetings. The Board is a governing body as provided in and for purposes of the Open Meetings Act, codified as Tennessee Code Annotated, Title 8, Chapter 44.

Section 23. Governmental Tort Liability. The Authority is a governmental entity as provided in and for purposes of the Tennessee Governmental Tort Liability Act, codified as Tennessee Code Annotated, Title 29, Chapter 20.

Section 24. Interlocal Cooperation. The Authority is a public agency as provided in and for purposes of the Interlocal Cooperation Act, codified as Tennessee Code Annotated, Title 12, Chapter 9.

Section 25. Energy Acquisition Corporations. The Authority may be an associated municipality of an energy acquisition corporation as provided in and for the purposes of the Energy Acquisition Corporation Act, codified as Tennessee Code Annotated, Title 7, Chapter 39.

SECTION 17. Supplemental Powers. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Bonds may be issued hereunder for the purposes provided herein notwithstanding that any other law may provide for the issuance of bonds for like purposes and without regard to the requirements, restrictions or procedural provisions contained in any other law.

SECTION 18. If any provision of this Act or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect any other provision or application of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 19. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the City of Dickson. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified by him to the Secretary of State.

SECTION 20. For purposes of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 19 hereof.

PASSED: May 15, 2002


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this day of 2002

DON SUNDQUIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 3256 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.